

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
St. Regis Sheraton Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Corporation Franchise Tax :  
under Article 9A of the Tax Law  
for the Year 1968. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Decision by certified mail upon St. Regis Sheraton Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

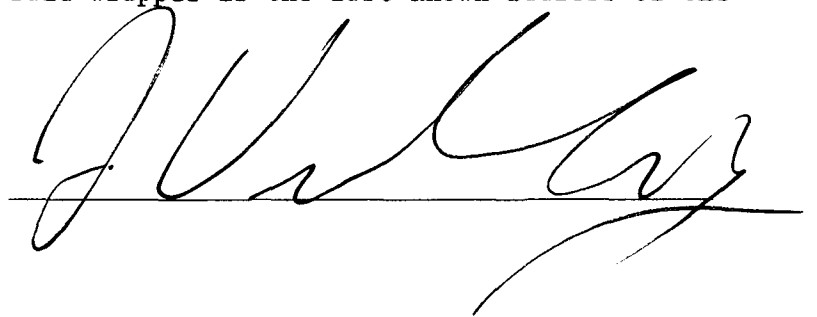
St. Regis Sheraton Corp.  
2 East 55th St.  
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
2nd day of January, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
St. Regis Sheraton Corp. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Corporation Franchise Tax :  
under Article 9A of the Tax Law  
for the Year 1968. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Kathleen S. McCreary the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Kathleen S. McCreary  
320 Park Ave.  
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 2, 1980

St. Regis Sheraton Corp.  
2 East 55th St.  
New York, NY

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Kathleen S. McCreary  
320 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
ST. REGIS SHERATON CORP.  
for Redetermination of a Deficiency or  
for Refund of Corporation Franchise Tax  
under Article 9-A of the Tax Law for the  
Year 1968.

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DECISION

Petitioner, St. Regis Sheraton Corp., 2 East 55th Street, New York, New York, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year 1968 (File No. 15113).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 22, 1977 at 1:30 P.M. Petitioner appeared by Kathleen S. McCreary, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether a claim for refund based on a net operating loss carryback may be granted if, because of a mistake in mailing or delivery, the claim was received after the expiration of the statutory time for filing.

II. Whether the requirement for timely filing is met by the timely filing of an informal notice of claim followed by receipt of the formal claim after the statutory time limitation has expired.

FINDINGS OF FACT

1. A Claim for Credit or Refund of Corporation Tax Paid for the period ended December 31, 1968 (Form CT-8) addressed to the New York State Corporation

Tax Bureau was executed on petitioner's behalf by one of its officers and was dated March 11, 1975.

The aforesaid claim stated that for the taxable year ended December 31, 1971, petitioner's Federal taxable loss was \$973,578.00. Petitioner sought a refund of \$34,206.00 based on carrying back a net operating loss of \$545,347.00 for the taxable year ended December 31, 1971 to the taxable year ended December 31, 1968.

A letter dated March 11, 1975 on the letterhead stationery of the Sheraton Corporation, which was addressed to the New York State Corporation Tax Bureau, State Campus, Albany, New York 12227, and signed by Paul E. Murphy "Manager - State Taxes" stated, in part, "We enclose Claim for Credit or Refund (Form CT-8) for the above taxable year of St. Regis Sheraton Corporation." The period so referred to was the taxable year ended December 31, 1968.

2. A Claim for Credit or Refund of Corporation Tax for the period ended December 31, 1968 (Form NYC-8) addressed to the City of New York, Finance Administration, was executed on petitioner's behalf by one of its officers and was dated March 11, 1975.

The aforesaid claim stated that for the taxable year ended December 31, 1971, petitioner's Federal taxable loss was \$973,578.00. Petitioner sought a refund of \$28,397.00, based on carrying back a net operating loss of \$574,014.00 for the taxable year ended December 31, 1971 to the taxable year ended December 31, 1968.

A letter dated March 11, 1975 on the letterhead stationery of the Sheraton Corporation, which was addressed to the New York City Finance Administration and signed by Paul E. Murphy "Manager - State Taxes" stated, in part, "We enclose Claim for Credit or Refund (Form NYC-8) for the above taxable year of St. Regis Sheraton Corporation." The period so referred to was the taxable year ended December 31, 1968.

3. Both the claim and the letter referred to in Finding of Fact "1" were enclosed in an envelope on or about March 11, 1975, and addressed to the New York City Finance Administration, Department of Tax Collection, 139 Centre Street, New York, New York 10013. Both were mailed from Boston on March 12, 1975 in said envelope.

Said envelope with enclosures was received by the New York City Finance Administration, Department of Tax Collection, at the above address on March 14, 1975. Thereafter, the envelope was forwarded to and received by the New York State Department of Taxation and Finance on October 20, 1975.

4. Both the claim and the letter referred to in Finding of Fact "2" were enclosed in an envelope on or about March 11, 1975, and addressed to the New York State Corporation Tax Bureau, State Campus, Albany, New York 12227. Both were mailed from Boston on or about March 12, 1975 in said envelope.

Said envelope with enclosures was received by the New York State Department of Taxation and Finance, Corporation Tax Bureau, on March 18, 1975. Thereafter, it was forwarded to and received by the New York City Finance Administration on March 28, 1975.

5. A Claim for Credit or Refund of Corporation Tax Paid for the period ended December 21, 1969 addressed to the New York State Corporation Tax Bureau was executed on petitioner's behalf by one of its officers and was dated March 12, 1975.

The aforesaid claim stated that for the taxable year ended December 31, 1971, petitioner's Federal taxable loss was \$973,578.00 "which, on a separate Federal return basis, would have been, its net operating loss carryback to its taxable years ended 12/31/68 and 12/31/69."

Said claim also contained the following "computation of New York State Corporation tax refund for the taxable year ended 12/31/69--":

"Federal taxable loss for taxable Year ended 12/31/71	(\$973,578.00)
Less: Interest paid to stockholders (\$273,832) less 10%	<u>246,449.00</u>
Taxable net loss carryback	(\$727,129.00)
Less: Applied to taxable year ended 12/31/68 per prior claim filed	<u>545,347.00</u>
Carryback to taxable year ended 12/31/69	(\$181,782.00)
Allocated net income for taxable year ended 12/31/69, as reported	<u>694,010.00</u>
Allocated net income after carryback	\$512,228.00
Tax on Allocated Net Income after Carryback	\$ 35,856.00
Tax on Allocated Net Income as originally computed per return	<u>48,581.00</u>
Refund Due	\$ 12,725.00"

A letter dated March 12, 1975 on the letterhead stationery of the Sheraton Corporation addressed to the New York State Corporation Tax Bureau, State Campus, Albany, New York 12227, and signed by Paul E. Murphy, "Manager - State Taxes" stated, in part, "Enclosed for filing is Claim for Credit or Refund for the Taxable Year ended 12/31/69 of the subject company." The company so referred to was petitioner, St. Regis Sheraton Corp.

6. A Claim for Credit or Refund of Corporation Tax for the period ended December 31, 1969 addressed to the City of New York was executed on petitioner's behalf by one of its officers and was dated March 12, 1975.

The aforesaid claim stated that for the taxable year ended December 31, 1971, petitioner's Federal taxable loss was \$973,578.00. Petitioner sought a refund of \$8,421.00, based on further carrying back the unapplied loss for the taxable year ended December 31, 1968, amounting to \$153,115.00, to the taxable year ended December 31, 1969.

A letter dated March 12, 1975 on the letterhead of the Sheraton Corporation addressed to the New York City Finance Administration, Department

of Tax Collection, 139 Centre Street, New York, New York 10013, and signed by Paul E. Murphy, "Manager - State Taxes" stated, in part, "Enclosed for filing is Claim for Credit or Refund for the Taxable Year Ended 12/31/69 of the subject company."

7. Both the claim and the letter referred to in Finding of Fact "5" were mailed on or about March 12, 1975 and were received in the mail room of the New State Department of Taxation and Finance on March 14, 1975. Thereafter on March 18, 1975, both were received by the Corporation Tax Bureau.

8. Both the claim and the letter referred to in Finding of Fact "6" were received by the New York City Finance Administration on March 14, 1975.

9. Pursuant to section 1087(d) of the Tax Law, the last day for the filing of a claim by petitioner for credit or refund of an overpayment of tax under Article 9-A of the Tax Law, as was attributable to the application to the petitioner of a net operating loss carryback for the taxable year 1971, was March 15, 1975.

10. By letter dated December 2, 1975, petitioner was informed that its aforesaid claim dated March 11, 1975 and addressed to the New York State Corporation Tax Bureau for refund, based on a net operating loss carryback for the period ended December 31, 1971 to the period ended December 31, 1968, was disallowed in full. The reason for this was that said claim was received by the Corporation Tax Bureau on October 20, 1975 and, therefore, was not filed within the time required by statute.

11. William J. Anderson, Deputy Director, General Government Division, General Accounting Office, testified before the Subcommittee on Postal Facilities, Mail and Labor Management of the Committee on Post Office and Civil Service of the House of Representatives on March 29, 1976. In connection therewith, he submitted to the subcommittee statistical data showing, in part, that the



percentage of "Monthly Misdirected Mail Rates" in New York was 4% for the month of November 1975, 5% for the month of December 1975 and 4% for the month of January 1976.

The Report of the Commission on Postal Service submitted to the President and the Congress of the United States on April 18, 1977 stated, in part, on Page 49 of Volume 1 thereof, that "The error rate for letter-sorting machines is unacceptably high, caused by human error and machine malfunction."

12. The petitioner's Claim for Credit or Refund of Corporation Tax Paid dated March 12, 1975, made to the New York State Corporation Tax Bureau with respect to the taxable period ended December 31, 1969, was paid as adjusted and set forth in the "Statement of Tax Reduction or Overpayment" of the Corporation Tax Bureau, dated September 2, 1975.

#### CONCLUSIONS OF LAW

A. That petitioner's claim for Credit or Refund of Corporation Tax Paid dated March 11, 1975 and made to the Corporation Tax Bureau for the period ended December 31, 1968 was not filed within the time required by section 1087(d) of the Tax Law. There is no presumption that a notice has been received in due course of mail where it was not properly addressed. Lothrop v. All State Life Insurance Company 62 Misc. 2d 962, 310 N.Y.S. 2d 631. Moreover, it is presumed that a letter not received was not duly mailed. Teichberg v. D.H. Blair & Co. 63 Misc. 2d 1073, 314 N.Y.S. 2d 284.

B. That the receipt by the Corporation Tax Bureau on March 18, 1975 of petitioner's claim for Credit or Refund of Corporation Tax Paid dated March 11, 1975, made to the New York City Finance Administration for the period ended December 31, 1968, did not constitute informal notice of claim to the Corporation Tax Bureau with respect to the period ended December 31, 1968.

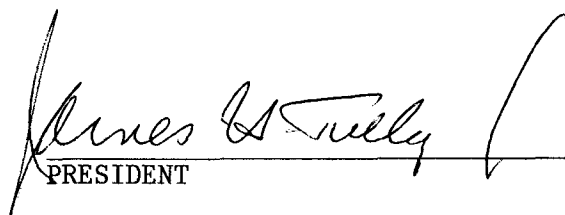
C. That petitioner's Claim for Credit or Refund of Corporation Tax Paid dated March 12, 1975, made to the Corporation Tax Bureau for the period ended December 31, 1969 and received in the mail room of the Department of Taxation and Finance on March 14, 1975, did not constitute informal notice to the Corporation Tax Bureau of petitioner's claim for refund for the taxable period ended December 31, 1968. It cannot be presumed that the Corporation Tax Bureau was on notice of the filing of the informal claim for the prior year merely by auditing a return for a later year involving the same issue. Brigham v. United States 470 F. 2d 571 (Ct. of Cl. 1972). Possession of information from which it could be deduced that the taxpayer is entitled to, or might desire, a refund is not sufficient. Rosengarten v. United States 181 F. Supp 275 (Ct. of Cl. 1960) cert. denied 364 U.S. 822, 81 S.Ct. 60, 5 L.Ed. 2d 59.

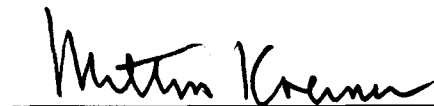
D. That the petition of St. Regis Sheraton Corp. is denied and the disallowance of the Claim for Credit or Refund of Corporation Tax Paid is sustained.

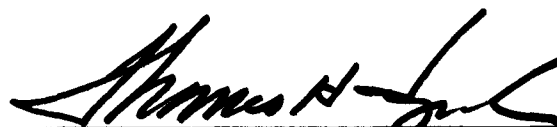
DATED: Albany, New York

**JAN 2 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER